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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the eighth periodic report of Switzerland*

Specific information on the implementation of articles 1 to 16 of the Convention, in particular in relation to the Committee's previous recommendations

Issues identified for follow-up in the preceding concluding observations

1. In its previous concluding observations (see CAT/C/CHE/CO/7, para. 22), the Committee requested the State party to provide, by 14 August 2016, information on its follow-up to the following recommendations: (a) on police violence, particularly the need to send medical reports of injuries indicating ill-treatment to the independent mechanism responsible for examining them (para. 10 (b)); (b) on the principle of non-refoulement (para. 13); (c) on unaccompanied asylum-seeking minors (para. 18); (d) on prison conditions, particularly on the need to conduct inquiries into all acts of violence committed in prison facilities (para. 19 (e)). Taking note of the information received on 6 July 2016 (see CAT/C/CHE/CO/7/Add.1), the Committee thanks the State party for its replies. However, in view of the content of those replies, the Committee regrets that the State party has not taken substantive steps to implement the recommendations contained in paragraphs 10, 13, 18 and 19 (see paragraphs 22–24, 6–7, 18 and 21 below).

Articles 1 and 4

2. In light of the Committee's previous concluding observations (see CAT/C/CHE/CO/7, para. 7, CAT/C/CHE/CO/6, para. 5 and CAT/C/CR/34/CHE, paras. 4 (a) and 5 (a)), please provide updated information on the measures taken or envisaged to define torture as a criminal offence in national law, in full conformity with article 1 of the Convention, and to ensure that penalties for torture are commensurate with the gravity of the crime.

* Adopted by the Committee at its sixty-second session (6 November–6 December 2017).

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Article 2[1]

3. In light of the Committee's previous concluding observations (para. 8), please provide information on the procedures in place to ensure that all persons deprived of liberty are, in practice and from the very outset of the deprivation of liberty, informed of their rights: (a) the right of access to a lawyer, including as part of the process of arrest (*appréhension*), (b) the right to contact family members or other persons of their choice, and (c) the right to request and receive a medical examination by an independent doctor or a doctor of their choice.

4. In view of the Committee's previous concluding observations (para. 9) and the favourable opinion of the Federal Council of 29 June 2016 on the proposal to establish a national institution for the protection of human rights, please provide updated information on: (a) the progress made in establishing that institution; (b) the measures envisaged to ensure that the institution conforms fully with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles); (c) the resources allocated to ensure that the institution is able to fulfil its mandate.

5. Please provide information on any measures envisaged to increase the resources allocated to the National Commission for the Prevention of Torture to enable it to fulfil its mandate effectively. Please provide information on the implementation by the State party of the recommendations issued by this Commission since 2015, indicating which recommendations have not yet been implemented and the reasons why.

Article 3

6. In light of the Committee's previous concluding observations (para. 13) and of the judgments of the European Court of Human Rights in the cases of *X v. Switzerland*, and *A.I. v. Switzerland*,[2] please indicate the measures envisaged to improve the system for assessing the risk of violating the principle of non-refoulement. In particular, please indicate the measures envisaged to take better account of: (a) information concerning the situation in the country of origin; (b) medical reports, especially those established on the basis of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

7. Please specify the measures taken to avoid extradition on the sole legal basis of diplomatic assurances provided by the country of origin, where there are substantial grounds for believing that a person would be in danger of being subjected to torture. Please mention, for the period since 2015, all cases in which the State party has received diplomatic assurances from another State, specifying the State concerned, the content of the assurance and any mechanisms in place to monitor the status of the persons concerned after their return and ensure the protection and return of and reparation for persons who have been victims of torture and ill-treatment as a consequence of decisions on their removal or extradition.

8. Please provide information on measures taken or envisaged to provide a judicial remedy resulting in the automatic suspension of removal orders issued under articles 64, 64 (a), (c) and (d) and 68 of the Federal Foreign Nationals Act. Please also clarify whether the accelerated procedure for refusal of entry into the country at the airport in article 65 is subject to a thorough individual assessment of the risks of violating the principle of non-refoulement.

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[1] The issues raised under article 2 could also be addressed under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

[2] European Court of Human Rights, *X v. Switzerland*, No. 16744/14, 26 January 2017; and *A. I. v Switzerland*, No. 23378/15, 30 May 2017.

9. Please indicate the measures that the State party has taken to ensure that, even under the Dublin system, a destination country's asylum policy offers adequate reception conditions and sufficient guarantees that the person concerned will not be removed to his or her country of origin without a prior assessment of the risks involved.[3] Please comment on reports that the Swiss authorities have carried out illegal forced removals to Italy.

10. In light of the Committee's previous concluding observations (para. 15), as well as the entry into force in 2015 of the legislative amendment to the Asylum Act, please explain the criteria for granting free legal assistance to asylum seekers under the law and whether free access to a qualified, independent lawyer applies to all recourse procedures.

11. Please provide annual statistical data for the period since 2015, disaggregated by sex, country of origin, ethnicity and age of persons seeking asylum, on the number of:

(a) Asylum requests registered;

(b) Applications for asylum, refugee status or other forms of humanitarian protection that were granted and the number of cases, if any, in which protection was granted in application of the principle of non-refoulement;

(c) Torture victims identified among asylum seekers in relation to the total number of asylum seekers and the measures taken in respect of those identified as torture victims. In this regard, please provide information on the mechanism in place to identify victims of torture;

(d) Persons extradited, expelled or returned, and the countries to which they were extradited, expelled or returned;

(e) Appeals against expulsion or extradition decisions lodged on the basis that applicants might be in danger of being subject to torture in their countries of destination, and the results of those appeals.

Articles 5, 7 and 8

12. Please indicate whether, since the consideration of the previous report, the State party has rejected, for any reason, any requests from another State for the extradition of an individual suspected of having committed acts of torture and has prosecuted the individual itself.

Article 10

13. In light of the Committee's previous concluding observations (para. 21), please provide information — indicating the total number of persons concerned, the percentage trained and the frequency of the training provided — on the training programmes provided to all State agents involved in holding persons in custody or in the interrogation or treatment of any individual who is in any form of detention or imprisonment in the following areas:

(a) The provisions of the Convention;

(b) The guidelines given on detecting and documenting signs of torture and ill-treatment, in accordance with the Istanbul Protocol.

14. Please indicate whether the State party has developed specific methods for evaluating the effectiveness and impact of such training in terms of the prevention of torture and the observance of the absolute prohibition of torture.

Article 11

15. In light of the Committee's previous concluding observations (para. 17) and the decisions of the Federal Court of May 2016 and April 2017 confirming that alternatives to detention are not applied to asylum seekers who are subject to a decision taken in line with

[3] European Court of Human Rights, *Sharifi et al. v. Italy and Greece*, No. 16643/09, 21 October 2014. and *Ilias and Ahmed v. Hungary*, No. 47287/15, 14 March 2017.

the Dublin Regulation, please indicate, for each canton, the criteria and the procedure for examining the necessity and proportionality of imposing detention in the case of migrants in an irregular situation, and what alternatives to detention exist.

16. Please provide annual data for the period since 2015, by canton, on: (a) the average period of detention of migrants in an irregular situation; (b) the number of specialized structures for the reception of migrants and the regime applicable to persons housed therein. Indicate whether irregular migrants are always accommodated in pretrial detention facilities or prisons.

17. Given the decision of the Federal Court finding against the detention in the canton of Zug of a family of Afghan refugees, please indicate the measures envisaged to ensure that families of irregular migrants with children are not detained or, if they are, that detention is used only as a measure of last resort, for the shortest time possible, when placement in normal housing is impossible.

18. In light of the Committee's previous concluding observations (para. 18), please provide information for the period since 2015, by canton, on:

(a) The number of asylum-seeking children who have been detained and the average period of detention;

(b) The measures taken to ensure that reception conditions are appropriate to their needs and their age;

(c) The measures taken to thoroughly investigate the disappearances of unaccompanied minors housed in shelters. Please provide information on the conduct of such investigations and the results produced.

19. In light of the Committee's previous concluding observations (para. 19), please provide:

(a) Annual statistics for the period since 2015, broken down by place of detention, on the total capacity and the occupancy rate of all detention facilities, giving the numbers of remand and convicted prisoners;

(b) Information on the measures taken or envisaged to reduce prison overcrowding at Champ-Dollon, in light of the decision of the Federal Supreme Court of 21 March 2016 finding that the conditions of detention violated article 3 of the European Convention on Human Rights;

(c) Information on the measures taken to ensure that detainees with serious mental illness are cared for in a properly equipped environment and by trained staff;

(d) Information on the measures taken to allow for the possibility of a review of a decision sentencing a convicted person to life imprisonment, under article 64, 1 bis, of the Criminal Code.

20. Please provide the following information regarding the disciplinary regime in detention centres, by canton:

(a) The measures taken to amend the law applicable to disciplinary segregation, in order to reduce the maximum duration of such segregation, which is 20 or 30 days in some cantons;

(b) The measures taken to ensure that solitary confinement is never applied to minors or persons with psychosocial disabilities, and to ensure that detainees placed in solitary confinement are not automatically deprived of contact with the outside world and may enjoy at least one hour of outdoor exercise. Please indicate how often a detainee's physical and mental condition is monitored while he or she is held in isolation and whether isolation is ever interrupted for health reasons. Please provide annual statistical data for the period since 2015 indicating the average duration of solitary confinement;

(c) The measures taken to ensure that prisoners are heard in person by the competent authority and that they can be allowed to call witnesses, conduct a cross-examination of the evidence and receive a fully reasoned decision explaining the reasons for the punishment and the modalities of appeal;

(d) The measures envisaged to establish a register of disciplinary sanctions in all cantons.

21. Please provide the following:

(a) Annual statistical data for the period since 2015, disaggregated by the place of deprivation of liberty and the ethnicity or nationality of the victim, on: (i) the number of deaths in custody, with an indication of the cause of death; (ii) the number of instances of injury or loss of life as a result of violence committed inside places of detention, along with an indication of whether the perpetrator was a prison employee or another detainee, or whether such instances occurred as a result of negligence. Please also provide detailed information on the outcome of investigations into such deaths or violence, including the penalties imposed on perpetrators of torture, ill-treatment or negligence causing death or injury. Please specify the reparation provided to the victims of such acts and their families;

(b) The measures taken to counter the problem of inter-prisoner violence, improve the monitoring and detection of at-risk detainees and prevent suicide.

Articles 12 and 13

22. In light of the Committee's previous concluding observations (para. 10) and the follow-up responses of the State party, please indicate the progress made establishing an independent mechanism empowered to receive complaints relating to violence or ill-treatment by law enforcement officials and to investigate such complaints.

23. Please provide annual statistics for the period since 2015, disaggregated by crime and ethnicity or nationality, age and sex of the victim, on:

(a) The number of complaints filed and police reports issued regarding offences such as torture and ill-treatment, complicity or participation in such acts, alleged excessive use of force by law enforcement officials or the use of such force with the knowledge or consent of such officials;

(b) The number of investigations initiated as a result of those complaints and the initiating authority;

(c) The number of investigations that were dismissed;

(d) The number of investigations that led to prosecutions;

(e) The number of prosecutions that led to convictions;

(f) The nature of the penal and disciplinary measures applied and the length of the prison sentences imposed;

(g) The agents suspected of having engaged in torture or ill-treatment who are systematically suspended or reassigned during the corresponding investigation;

(h) The number of ex officio investigations into cases of torture and ill-treatment and the number of ex officio prosecutions;

(i) The number of cases of torture or ill-treatment reported by doctors following medical examinations of detainees and the outcomes of those cases.

24. Please indicate the number of criminal investigations conducted since 2015 by the Inspectorate General of Services against police officers belonging to the Drugs Task Force; the number of such investigations that have led to prosecutions; the number of such prosecutions that have led to convictions and the penal and disciplinary sanctions that were applied, including the length of prison sentences.

Article 14

25. In light of paragraph 46 of the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties, please provide information on:

(a) Reparation measures awarded by the courts or other administrative bodies to victims of torture and ill-treatment and their families since 2015. This should include the

number of requests for compensation that have been made, the number that have been granted, the amounts awarded and the amounts actually provided in each case;

(b) Any rehabilitation programmes for victims of torture or ill-treatment, specifying whether they provide for medical and psychological assistance.

Article 16

26. In light of the Committee's previous concluding observations (para. 16), please indicate whether observers from the National Commission for the Prevention of Torture are now present during forcible repatriations by boat. Please explain the measures taken to ensure that the use of force in the context of forcible repatriation is always justified in accordance with the principle of proportionality and, specifically, to renounce the use of partial immobilization, which is allegedly used on a systematic basis on special flights chartered by Switzerland. In this regard, please provide updated information on the investigation into the case of Joseph Ndukaku Chiakwa, who died during an attempted removal in 2010.

27. In light of the Committee's previous concluding observations (para. 20), please indicate the measures taken to guarantee respect for the physical integrity and autonomy of intersex individuals, so that no one is subjected during childhood to non-urgent medical or surgical procedures intended to determine the sex of the child.

General information on other measures and developments relating to the implementation of the Convention in the State party

28. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous periodic report to implement the provisions of the Convention or the Committee's recommendations. This may include information on institutional developments, plans or programmes. Please indicate what resources have been allocated for these purposes and provide statistical data and any other information that the State party considers relevant.